

IN THE SUPREME COURT OF THE UNITED STATES

No. 23-7400

LESLIE J. REYNARD, Petitioner,

v.

WASHBURN UNIVERSITY OF TOPEKA, Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR REHEARING

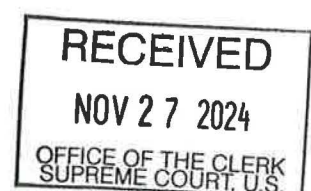
Pursuant to Supreme Court Rules 29, 39, and 44, Professor Reynard, Professor Leslie J. Reynard, respectfully seeks rehearing of the Court's October 7, 2024, denying certiorari for her ADA claims against Washburn University. This petition focuses on substantial new grounds, including procedural barriers detrimental ADA enforcement, perception of judicial bias in favor of Respondent (as a public educational institution), and evolving legal issues in ADA enforcement that have profound implications for ADA jurisprudence and constitutional rights.

I. PROCEDURAL BARRIERS THAT UNDERMINE ADA PROTECTIONS MUST BE ELIMINATED

This Court has consistently held that procedural technicalities should not preclude substantive justice. In *Smith v. Berryhill*, 139 S. Ct. 1765 (2019), the Court emphasized that procedural dismissals must not obstruct claims with substantive merit.

A. Statutory Interpretation and the Primacy of ADA Obligations

The ADA was enacted to eliminate discrimination against individuals with disabilities in employment. In *Cummings v. Premier Rehab Keller, P.L.L.C.*, 142 S. Ct. 1562 (2022), this Court



affirmed the importance of interpreting the ADA's statutory language to uphold its primary intent. Although *Cummings* limited emotional distress damages, it underscored the ADA's role in ensuring disabled individuals' rights within employment settings, encouraging a careful reading of the statute to effectuate its goals and objective application of the statute to Professor Reynard's failure-to-accommodate claim.

B. Relevance to Professor Reynard's Failure-to-Accommodate Claim:

As with the claimant in *Smith*, Professor Reynard engaged diligently and substantively with the administrative process throughout the entire 13 years of her tenure regarding her ADA rights, only to be denied judicial review on procedural grounds after a long period of unconscionable foot-dragging on Washburn's part. Washburn's deliberate delays and reliance on procedural objections deprived Professor Reynard of her statutory right to reasonable accommodation.

Such dismissals contradict the ADA's core purpose of ensuring equitable access for disabled individuals and warrant this Court's review to reaffirm the primacy of substantive rights over procedural hurdles. The ADA was designed to protect against precisely this type of procedural barrier that, when unaddressed, can easily result in unjust denials of critical workplace accommodations.

Professor Reynard's failure-to-accommodate claim calls for a reaffirmation of the ADA's mandate that reasonable and timely accommodation is fundamental to disability rights. By reviewing this case, the Court will reinforce the ADA's obligation to provide reasonable accommodation as a right not limited by procedural constraints, mirroring the Court's approach

in *Cummings* to honor the ADA's role in eliminating discrimination through enforceable standards, reaffirming that procedural fairness is a cornerstone of ADA enforcement.

C. Timeliness of Professor Reynard's Claims (Hostile Environment)

The hostile environment created by Washburn University constituted an ongoing pattern of discriminatory and retaliatory actions throughout Professor Reynard's 13-year tenure. These continuing violations cumulatively impacted her ability to participate meaningfully in the workplace due to her disabilities. Under the *continuing violations doctrine*, claims of hostile work environment are not time-barred if any acts contributing to the claim occurred within the statutory filing period. This principle was clearly established in *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101 (2002), where this Court held that hostile work environment claims are fundamentally different from discrete acts of discrimination because they rely on the cumulative effect of repeated conduct.

In Professor Reynard's case, the ongoing failure to accommodate her disabilities, the repeated refusal to address her medical needs, and retaliatory actions following her reasonable accommodation requests demonstrate a continuous hostile environment. These actions were not isolated incidents but part of a pervasive pattern, with the most recent discriminatory acts falling well within the statutory period. Thus, under *Morgan*, the statute of limitations for filing her claims should be measured from the date of the last act contributing to the hostile environment rather than the first discriminatory act.

Washburn's reliance on procedural timeliness objections ignores this distinction, effectively penalizing Professor Reynard for enduring years of discrimination before filing her claim. Such an interpretation undermines the ADA's core purpose of protecting disabled

individuals from systemic and ongoing workplace discrimination. This Court's intervention is necessary to reaffirm that procedural barriers must not negate the substantive protections guaranteed by the ADA.

II. JUDICIAL BIAS AND ITS IMPACT ON PROCEDURAL FAIRNESS

Judicial impartiality is fundamental to the rule of law. In *Williams v. Pennsylvania*, 579 U.S. 1 (2016), this Court emphasized that even the appearance of bias can undermine public confidence in the judiciary. The specific pattern of favorable rulings for Washburn University raises concerns of implicit bias, especially given the institution's close ties to Kansas's legal and political systems.

A. Professor Reynard's ADA Claims Were Improperly Dismissed.

Judge Holly Teeter's dismissal of Professor Reynard's claims is a case in point. Professor Reynard experienced improper procedural dismissals of her valid claims in the District and Appeals Courts based upon Washburn's allegation that inconsistent timeliness tenets of a federal administrative agency (the EEOC) were sufficient to time-bar judicial review of her substantive, valid, failure-to-accommodate claim under the ADA.

By imposing an adverse employment action requirement for a failure-to-accommodate claim—contrary to binding precedent in *Exby-Stolley*—Judge Teeter's ruling not only disregarded settled law but also perpetuated a troubling pattern of judicial deference to Washburn. Such rulings create an appearance of favoritism that undermines the integrity of judicial proceedings. The Tenth Circuit's affirmation of Judge Teeter's decision exacerbates this issue. This intra-circuit inconsistency highlights the urgent need for this Court's intervention to address potential bias and ensure consistent application of the law.

B. Tenure is a Constitutionally Protected Property Right

Tenure is a constitutionally protected property right under the Fourteenth Amendment, as recognized in *Board of Regents v. Roth*, 408 U.S. 564 (1972), and *Perry v. Sindermann*, 408 U.S. 593 (1972). Professor Reynard's tenure at Washburn University conferred a legitimate expectation of continued employment, subject to due process protections. Washburn's actions—failing to provide reasonable accommodations and creating a hostile work environment—violated Professor Reynard's substantive and procedural due process rights. The university's failure to uphold its contractual and statutory obligations undermines the protections afforded to tenured faculty and sets a dangerous precedent for academic professionals nationwide.

C. Due Process and Equal Protection Violations Exist in This Case.

Professor Reynard asserts that Washburn's actions and the courts' rulings in favor of Respondent violated her due process and equal protection rights under the Fourteenth Amendment. These constitutional claims, not previously addressed, provide substantial new grounds for rehearing.

- 1. Substantive and Procedural Due Process.** Washburn's failure to accommodate Professor Reynard's disability infringed upon her fundamental rights to equal participation in the workplace. Moreover, procedural dismissals denied her a meaningful opportunity to challenge the adverse decisions.
- 2. Equal Protection.** Washburn's unequal treatment of Professor Reynard compared to nondisabled colleagues violated constitutional guarantees of equal protection under the law.

D. Judge Teeter's Grant of Summary Judgment Usurped the Jury's Role

The District Court's summary judgment terminating Dr. Reynard's tenure violated the Seventh Amendment's guarantee of a jury trial. As recognized in *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986), summary judgment is appropriate only absent genuine factual disputes. Disputes over Washburn's failure to accommodate Professor Reynard's disability presented genuine factual issues, which should have been resolved by a jury under established precedent.

The premature termination of tenure without adjudication usurps the jury's role, as articulated in *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133 (2000). Additionally, it infringes upon Dr. Reynard's constitutionally protected property interest under *Perry v. Sindermann*. Granting rehearing would address these constitutional violations and reaffirm the jury's role in resolving complex employment disputes.

E. Judicial Outcomes of Past Court Decisions May Reflect Implicit Judicial Bias.

Washburn University is an institution operating as part of the State of Kansas, receiving local, state, and federal funding. It is located in Topeka, the State Capitol, and – along with the State of Kansas itself – is among the largest employers in the area. Furthermore, its law school has produced a myriad of practicing attorneys, judges, legislators, and similarly respected professionals who occupy powerful positions within state and federal institutions.

Professor Reynard raises serious concerns of bias, grounded in prior State court, lower court, and Supreme Court rulings favoring Washburn University. Historically, courts have scrutinized potential biases when patterns suggest undue favoritism toward specific institutions¹, particularly in cases impacting vulnerable populations. Washburn University's

¹ *Williams v. Pennsylvania*, 135 S. Ct. 1899, 195 L. Ed. 2d 132.

history of alleged malfeasance and misfeasance extends beyond Reynard's ADA claim; documented cases reveal repeated allegations of deliberate violations of protected rights.

O'Connor v. Washburn University:² *Holier Than Thou* (Anti-Catholic Washburn installation).



In this death penalty case, the judge refused to recuse himself and, in this failure, was found to have violated the Plaintiff's civil rights. This case has been put forward as a strong example of judicial bias ([Williams v. Pennsylvania: The Intolerable Image of Judicial Bias](#). Lauren Keane, Loyola University Chicago Law Journal, V.49:1, Fall 2017). See also: [Complicit Bias and the Supreme Court - Harvard Law Review](#). Michelle Goodwin, 136 Harv. L. Rev. F. 119, Dec. 2022.

² The ***O'Connor v. Washburn University***, 416 F.3d 1216 (10th Cir. 2005), The decision by the Tenth Circuit Court of Appeals affirmed a federal district court decision denying damages to individuals who alleged that a religious sculpture displayed on the Washburn University campus (a public university) violated the First Amendment. The sculpture depicted a Catholic bishop with a liturgical head covering that some had interpreted to be "a stylized representation of a phallus." A faculty member and a student, both Roman Catholics, argued that the display of the exhibit demonstrated "state-sponsored disapproval of their religious beliefs." (Image via Censorpedia). The Supreme Court denied certiorari on March 6, 2006.

In this Establishment Clause case, Washburn displayed a statue entitled *Holier Than Thou*, depicted the Pope with a phallic miter and language critical of Catholic confession.

Finstad v. Washburn University:³

In this case, students alleged Washburn misrepresented its court reporting program's accreditation status, misleading them into enrolling under false pretenses. (This claim reflects objections Professor Reynard raised regarding Washburn's failure to offer required Communication courses.) Despite claims the university's misrepresentation directly harmed students' educational and career prospects, the Kansas Supreme Court ruled for Washburn.

Hysaw v. Washburn University of Topeka:⁴

This District Court case involved allegations of racial discrimination and breach of contract by Washburn's football program under 42 U.S.C. §§ 1981 and 1983. The Court found in favor of Washburn, granting partial summary judgment on multiple claims, including alleged property and liberty rights related to the football scholarship contracts. The ruling highlighted the absence of a constitutionally protected right to participate in collegiate athletics, thus restricting students' ability to seek redress against state institutions under federal civil rights

³ ***Finstad v. Washburn University***, 252 Kan. 465, 845 P.2d 685 (Kan. 1993).

"This is an action by court reporting students who are seeking damages against Washburn University of Topeka (Washburn). They alleged a violation of the Kansas Consumer Protection Act (KCPA), K.S.A. 50-623 *et seq.*, in that the school falsely stated in its 1987-89 catalogue that its program in court reporting was accredited or approved by the National Shorthand Reporters Association (NSRA). They further alleged "educational malpractice" in the conduct and supervision of the court reporting program. The district court granted summary judgment in favor of the school, and the students appealed. The appeal was transferred to this court pursuant to K.S.A. 20-3018(c)." Opinion of KS Supreme Court delivered by J Allegrucci

⁴ ***Hysaw v. Washburn University of Topeka***, 690 F. Supp. 940 (D. Kan. 1987)

This civil rights and breach of contract case arises out of a dispute early in Washburn University's 1986 football season. Several black football players complained that they were being treated in a racially discriminatory manner by the coaching staff and administration. The dispute culminated in those players boycotting team practices and the administration removing those players from the team.

laws. This case reinforces judicial reluctance to extend federal protections against state universities in contractual and civil rights contexts.

These cases establish a pattern of judicial rulings that favor Washburn's institutional interests, at times appearing to undermine individual rights under the First Amendment, consumer protection laws, and civil rights statutes. A perceived pattern of favorable rulings toward Washburn University challenges the presumption of impartiality that is foundational to the justice system, even when Washburn outrages public sensibilities and violates Constitutional and statutory obligations.

III. SUPREME COURT CLARIFICATION OF ADA ENFORCEMENT STANDARDS IS CRITICAL

A. External Circuit Splits on Necessity of “Adverse Employer Action”

There is a notable circuit split concerning ADA claims, particularly around the treatment of ongoing failure to accommodate disputes. Questions of timeliness and scope of judicial review. Circuits differ on whether procedural technicalities, like untimeliness, should be allowed to bar substantive ADA claims entirely. This inconsistency warrants Supreme Court clarification to ensure uniform enforcement of ADA standards nationwide.

When circuit splits impact fundamental protections under federal law, this Court has historically intervened to resolve ambiguities that otherwise threatened equitable justice. The inconsistency among circuits on the ADA's mandates in cases involving procedural dismissals creates ambiguity – ambiguity that disproportionately affects individuals with disabilities.

These unresolved legal discrepancies within and among circuits as to requirements for a plaintiff to succeed on a failure to accommodate claim under the ADA warrant the Supreme Court's intervention to ensure ADA standards are applied uniformly, since the ADA's

requirement for reasonable accommodation is foundational for protecting disabled individuals. However, circuits are split on whether adverse employment action is a necessary element in failure-to-accommodate claims. In *Exby-Stolley v. Board of County Commissioners*, 979 F.3d 784 (10th Cir. 2020), the Tenth Circuit held that failure-to-accommodate claims do not require proof of adverse employment action, aligning with the Second and Seventh Circuits. Conversely, the Fifth Circuit maintains that adverse action is necessary, creating an inconsistency in ADA enforcement that disadvantages disabled workers based on jurisdiction

B. Intra-Circuit Conflict within the Tenth Circuit.

Judge Holly Teeter's misapplication of *Exby-Stolley v. Board of County Commissioners*, 979 F.3d 784 (10th Cir. 2020), profoundly undermines ADA jurisprudence, highlighting the need for this Court's intervention. By erroneously requiring proof of an adverse employment action for a failure-to-accommodate claim, Judge Teeter directly contradicted Tenth Circuit binding precedent in *Exby-Stolley*, which explicitly held that adverse action is not a necessary element.

Reynard's filings consistently emphasize that the Tenth Circuit's ratification of this adverse action standard undermines *Exby-Stolley* and leaves disabled workers in the Tenth Circuit subject to conflicting legal standards. By affirming the District Court's erroneous requirement, the Tenth Circuit effectively diverged from its own precedent, creating confusion about whether a plaintiff must demonstrate an adverse employment action to proceed with a failure-to-accommodate claim. This discord is not merely academic—it carries real consequences for disabled employees in the Tenth Circuit and beyond, who now face uncertainty about the enforceability of their rights under the ADA.

C. Compelling, Unresolved Legal Questions Exist as to ADA Standards.

The Court's intervention is crucial to resolving these inconsistencies, as Professor Reynard has argued: ***A unified standard is essential to prevent ADA protections from being rendered meaningless by procedural barriers and inconsistent, often-conflicting, judicial interpretations.*** Inter-Circuit—and now, Tenth Circuit intra-circuit conflict arising from Judge Teeter's ruling contrary to the existing precedent -- underscores the importance of rehearing Reynard's case to clarify ADA standards for failure-to-accommodate claims and ensure uniformity across (and within) jurisdictions.

The Court has a strong interest in resolving circuit splits on ADA enforcement, as seen in past cases where circuit splits have prompted review. This case presents an opportunity to address the divergent interpretations of what constitutes a reasonable accommodation under the ADA, particularly in cases where disabilities are compounded by significant health conditions such as complex migraine, strokes, and similar neurological maladies such as Dr Reynard has managed her entire life. In cases such as Professor Reynard faced, the workplace not only was unfair and inhospitable – it also was life-threatening.

Granting rehearing would allow this Court to establish a clear, uniform standard for addressing ADA claims, particularly regarding procedural dismisses that limit judicial access and the growing confusion on. Applying the ADA to failure to accommodate claims would ensure that ADA protections are not applied based upon jurisdiction but on the specific requirements set out in the Act and its amendment. This would allow individuals like Professor Reynard to be confident that they can reasonable accommodations in any location across the United States and expect a just and equitable outcome in court based on the claim's substance.

This Court's approach in *Smith* and other circuit split cases supports the need to address these unresolved questions, ensuring that claimants with disabilities receive a judicial outcome that applies fair, consistent standards under the ADA regardless of administrative regulations governing filing requirements and/or procedural variances in their geographical locations in the United States when they assert their claims.

IV. PUBLIC POLICY IMPLICATIONS: PROTECTING THE ADA AGAINST PROCEDURAL DISMISSALS

This Court has emphasized in past rehearing decisions that cases affecting public policy or large groups warrant careful consideration⁵. The Supreme Court's attention to ADA and other civil rights cases is critical at this juncture of American history. No where is unfairness as visible as when the vulnerable populations of disabled citizens.

The broader implications of Reynard's case extend to the rights of disabled individuals across the U.S. as the workforce increasingly includes individuals managing chronic conditions like cancer and long COVID. Judicial clarity in ADA standards is essential to ensuring that disabled employees can access workplace modifications and maintain meaningful employment. In Reynard's filings, she states, "ADA protections must adapt to the evolving needs of disabled workers," reflecting a critical public policy goal of equitable accommodations for those affected by chronic health challenges.

⁵ [U.S. Supreme Court v. American public opinion: the verdict is in | Harvard Kennedy School](#) James F. Smith. July 13, 2020. "Research survey shows nation's highest court to be closely aligned to views of American public on major issues decided this year."

[Landmark Supreme Court Decisions and Public Policy - Plural Policy](#) Rachel Knowles, June 25, 2024.

"Supreme Court decisions establish legal precedents that shape policy creation and implementation at the city, state, and federal level. This is particularly true of larger, landmark cases. From landmark rulings on civil rights and civil liberties to groundbreaking reinterpretations of existing laws, SCOTUS decisions can nullify laws, reinterpret existing policy, and open up new arenas of policy making. ... The Supreme Court is the final arbiter of the Constitution and the laws of the land. Their decisions ultimately set the framework for public policy development in the United States."

A. Judicial Standards for Future ADA Enforcement.

Rehearing would set a precedent confirming that procedural technicalities must not dilute ADA protections. In light of public health trends, judicial guidance on ADA accommodations is imperative to prevent similar procedural dismissals from precluding essential protections for disabled employees. “The evolving challenges faced by disabled workers underscore the need for judicial clarity in ADA enforcement, ensuring equitable accommodations and access to justice..⁶. This brings the importance of disability-rights-management into sharper focus than that which pre-existed the pandemic.. Discrepancies and contradictions in the “fine print” of the ADA and its amendments must be rectified.

B. Ensuring Effective ADA Enforcement For All:

Granting rehearing would signal the Court’s commitment to protecting vulnerable populations, possessive statutory rights by ensuring the ADA’s enforcement mechanisms are robust, consistent, accessible to all, and equitably applied. This case provides an opportunity for this Court to set a precedent that procedural barriers must not obstruct essential rights under

⁶ [The State of Judges’ Well-Being: A Report on the 2019 National Judicial Stress and Resiliency Survey | Judicature](#) Terry A. Maroney, David X. Swenson, Joan Bibelhausen and David Marc. Vol. 7:1, 2023
In late 2020 and into 2021, two of the original authors of the National Judicial Stress and Resiliency Survey (Yetter and Swenson) examined the emerging literature on pandemic responses, interviewed several state-court judges on the faculty of the National Judicial College, and conducted a poll during a judicial presentation.¹⁸ They found strong indications that, at that time, the pandemic was exacerbating many of the stresses identified in the National Survey. Many courts shut down nearly all physical presence,... This unplanned reliance on “Zoom court” upended dress codes and conduct norms; introduced distractions; confused the often-unprepared lawyers, parties, and witnesses; and required additional time and explanation.... The normal roster of mental health treatment and other supportive services for litigants was significantly reduced. Cases stalled and backed up, creating a backlog from which judges across the country are still working to dig out.

While they were managing these highly challenging changes to the work environment, judges also were trying to keep themselves, their staff, and their families safe in uncertain times. In combination, these pressures appear to have increased judges’ experience of isolation, depression, anxiety, and increased intake of food or alcohol.²⁰ However, many judges also appeared to be taking active steps to increase their self-care. Indeed, the pandemic may have been a catalyst for some to close the “resiliency gaps” identified in the National Survey...

the federal disability laws, reinforcing a nationwide standard for ADA compliance and accommodation practices.

V. CONCLUSION

Granting rehearing in this case would set a critical precedent for ADA enforcement, affirming the judiciary's commitment to upholding disability rights in workplaces across the country. Thus, Professor Reynard respectfully requests the Court to grant rehearing on her Petition for Certiorari, based upon procedural fairness, statutory interpretations, the need to resolve circuit splits, and the broader policy implications of rights for disabled individuals under the Americans With Disabilities Act and its amendments at this point in history.

Respectfully submitted,



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Leslie Reynard, Pro Se

Date: 21st day of November, 2024

[Resubmission of October 30, 2024 *Request for Reconsideration*, returned by Supreme Court Clerk for correction of deficiencies with letter dated November 12, 2024]

CERTIFICATE OF MAILING

I hereby certify that on the 21st day of November, 2024, I mailed the foregoing Petition for Rehearing to counsel for Respondent:

Susan M. Mauch, Esq.
Goodell Straton Edmonds & Palmer LLP
515 Kansas Avenue
Topeka, Kansas 66603



Leslie Reynard, Petitioner *pro se*

CERTIFICATE OF PETITIONER PRO SE

I hereby certify that this Petition for Rehearing is presented in good faith and not for delay.



Leslie Reynard, Petitioner *pro se*